IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 58 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANAGER, BANK OF INDIA - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR Chetan Pandya for Mr SV RAJU for Applicant(s) : 1,
Mr SS Patel, Addl.PUBLIC PROSECUTOR for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 17/01/2007

ORAL JUDGMENT

1. The petitioner has invoked Article 226 of the Constitution and section 482 of the Code of Criminal Procedure, 1973, for an order to quash the complaint and the order made thereon by the learned

Metropolican Magistrate, Court no.9, Ahmedabad to issue summons as well as process as far as the petitioner is concerned. According to the petitioner, respondent no.2 has filed the complaint challenging the offences punishable under sections 406, 420, 467, 471 and 477 read with section 114 of IPC against an individual who is not joined herein as a party and the Manager of Bank of India at the local branch in Ahmedabad and the main office at Mumbai. The petition is filed by the Manager at the main office in Mumbai, stating on oath that the aforesaid complaint was filed on 11.2.1979 and the learned Magistrate was pleased to issue process against the accused including the present petitioner for offences under sections 406, 420, 467, 471 and 477 of IPC.

2. It is submitted that the petitioner had no knowledge of or connection with the transactions in which the offences as alleged by the original complainant could have been committed. Learned counsel, Mr Chetan Pandya, appearing with learned counsel Mr S.V. Raju submitted that, on going through the whole text of the complaint, no allegation could

be found against the present petitioner and hence the complaint and the criminal proceedings were clearly an abuse of process of Court, as far as the petitioner was concerned.

3. The petition appears to have been admitted after hearing the original complainant, who appeared in person and thereafter no one has appeared and no affidavit-in-reply is filed to controvert any of the averments made in the petition. Today, no one is present for the original complainant. Learned APP, Mr S.S. Patel submitted that apparently the complaint did not disclose any offence or allegation against the present petitioner who was not even named in the complaint.

4. Therefore, the petition is required to be allowed and accordingly it is allowed. Rule is made absolute in terms of para 10(a) with no order as tao costs. Direct Service is permitted.

[D. H. Waghela, J.]

msp